



THE ATTORNEY GENERAL OF TEXAS

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April 27, 1973

The Honorable William T. "Bill" Moore
Texas State Senator
State Capitol Building
Austin, Texas

Letter Advisory No. 18

Re: House Bill 7 relating
to candidacy of House
Speaker to succeed
himself and to solic-
itation or acceptance of
pledges or promises
for candidates for
Speaker.

Dear Senator Moore:

The State Affairs Committee, of which you are Chairman, has asked our opinion of House Bill 7, a Bill which would add a new Article 5428a, entitled "ROTATION OF SPEAKERSHIP" to the Revised Civil Statutes. The Bill contains three basic provisions:

"1. No Speaker of the House during a two-year term for which he is elected, shall become a candidate to succeed himself in that office.

"2. During the term for which he is elected, no Speaker of the House or member acting in his behalf shall solicit or accept promises or pledges for the Speaker's re-election in the future. The Speaker shall not solicit or accept promises or pledges for any other member as his successor.

"3. Any Speaker of the House or any member acting in his behalf who violates or attempts to violate this act shall be subject to discipline deemed appropriate by the House, including, upon a finding of such violation or attempted violation by a majority of the members of the House, after a hearing in a committee of the whole with due process being afforded, forfeiture of his office and removal by a majority vote of the House."

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Article III, Section 11 of the Constitution provides that each house of the Legislature

" . . . may determine the rules of its own proceedings, punish members for disorderly conduct, and with the consent of two thirds, expel a member . . . "

The right of both Houses to determine their own rules is a constitutionally protected right. Neither House may infringe upon or limit the present or future right of the other to adopt its own rules of proceeding.

The present House has adopted its own detailed rules of procedure relating to the conduct of members desiring to be candidates for Speaker. Rule 30, Rules of House of Representatives of the 63rd Legislature.

The content of House Bill 7 as passed by the House purports to regulate activity of members of one House of the Legislature only, and provides that the determinations of violations and the sanctions for violation be imposed only by that House. While valid legislation has been passed which restricts or prohibits certain conduct by members of the Legislature or by the members of only one House (e. g. , House Bill 8 and House Bill 9), in those instances violation is made a crime and determination of violation and imposition of sanction are left to the courts. House Bill 7 does not create any criminal offense, but merely regulates conduct of members of the House, with violation of the Act to be determined and punished solely by the House - - in the same manner in which the House's own Rules operate. Regulation in this manner is precisely the type of authority vested in the House alone by Article III, Section 11, and we are therefore of the opinion that the enactment of House Bill 7, as passed by the House would be unconstitutional.

We are advised that, in the Senate, House Bill 7 was amended by striking all of Sections 1, 2, and 3 and substituting in lieu thereof the following:

"1. No Speaker of the House shall succeed himself in that office or at any time thereafter occupy the office of or be the Speaker of the House of Representatives. "

The Speaker of the House of Representatives has asked our opinion as to the constitutionality of the Senate amendment.

Article III, Section 9 of the Texas Constitution provides that the House when it first assembles, shall

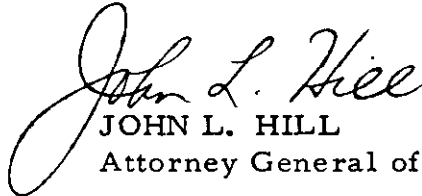
" . . . proceed to the election of a Speaker from its own members. "

The Legislature may not impose any greater requirement for qualification to be Speaker than is imposed by the Constitution, and a requirement that candidates for Speaker be not only members of the House, but also that they not be serving, or never have served as Speaker, amounts to an unconstitutional addition to the qualifications required by Article III, Section 9.

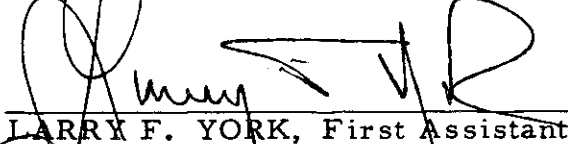
We do not in this opinion pass upon whether the House, by its own Rules, might proscribe such conduct as described in Sections 1, 2, and 3 of the House version of House Bill 7, nor do we pass upon whether the Legislature might constitutionally make such conduct a crime, punishable by the courts.


Our conclusions stated above find support in the following authorities: Powell v. McCormack, 395 U. S. 486, 23 L. Ed. 2d 491, 89 S. Ct. 1944 (1969); Dickson v. Strickland, 265 S. W. 1012 (Tex. 1924); Ferguson v. Wilcox, 28 S. W. 2d 526 (Tex. 1930); Burroughs v. Lyles, 181 S. W. 2d 570 (Tex. 1944); Walker v. Baker, 196 S. W. 2d 324 (Tex. 1946); Kirk v. Gordon, 376 S. W. 2d 560 (Tex. 1964); Luna v. Blanton, 478 S. W. 2d 76 (Tex. 1972); Reynolds v. Sims, 377 U. S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964); Attorney General Opinion H-15 (1973).

Very truly yours,


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APPROVED:


LARRY F. YORK, First Assistant


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Opinion Committee